

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Implementation of the Cable)
Television Consumer Protection)
and Competition Act of 1992)
)
Broadcast Signal Carriage Issues)

MM Docket No.92-259

COMMENTS OF GTE

GTE Service Corporation ("GTE"), on behalf of its domestic telephone operating companies and GTE Laboratories Incorporated, offers these comments in response to the Notice of Proposed Rule Making ("Notice") in the above-captioned proceeding, FCC 92-499, released November 19, 1992.

The Notice seeks comment on Sections 4, 5 and 6 of the referenced legislation, P.L.102-385, 102 Stat.1460, concerning mandatory carriage of local television stations by cable operators, retransmission consent to such carriage by operators and other multichannel video programming distributors, and the interplay of these "must-carry" and prior consent requirements.

Interest of GTE

While Congress did not write the 1992 Act with local exchange carriers ("LECs") such as GTE in mind, it used terms which may apply to LECs now or in the relatively near future. Even assuming continuation of the ban in Section 613(b) of the Cable Communications Policy Act of 1984, 47 U.S.C. §533(b), which precludes LECs from providing video programming directly to

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subscribers in their local serving areas,¹ GTE is affected in several ways by the 1992 Act and the proposed implementing rules.

While LECs would not be selecting programming, absent waiver, so long as the Section 613(b) prohibition stands, their status as "multichannel video programming distributors" under the 1992 Act remains to be seen.² Even a LEC operating purely as a transporter for others has reason to take an interest in the requirements imposed on potential customers -- cable operators or alternative video providers -- who seek to distribute local broadcast TV signals.

Beyond this, the allowances in the video dialtone regime³ for certain affiliations between carrier and programmer, as well as carrier-owned second-level gateways, could increase the LEC's participation in the programming businesses of its customers.

When a LEC leases facilities to a cable operator
or other multichannel video programming
distributor, it should be notified of carriage disputes.

At new Sections 614(b)(9) and (d)(2), 47 U.S.C. §§534(b)(9) and (d)(2), as well as Sections 615(g)(3) and (j)(1), 47 U.S.C. §§535(g)(3) and (j)(1), the 1992 Act requires the cable operator to give a broadcaster notice prior to deleting or

¹ The Commission has recommended that Congress eliminate the ban, *Second Report and Order*, CC Docket 87-266, 7 FCC Rcd 5781, 5841 (1992), and a LEC, C&P Telephone Company of Virginia, together with its affiliated Bell Atlantic Video Services Company, recently sued in U.S. District Court for the Eastern District of Virginia (Alexandria Division) to have Section 613(b) declared unconstitutional. Civil Action No. 92-1751-A, filed December 17, 1992.

² The new legislation defines such a distributor as a person "who makes available for purchase, by subscribers or customers, multiple channels of video programming." 47 U.S.C. §522(12)

³ *Second Report and Order*, 7 FCC Rcd at 5802-23. The Commission is to be commended for making available from other bureaus and offices substantial assistance to the Mass Media Bureau in implementation of the 1992 Act. Surely the involvement of the Common Carrier Bureau will aid in considering the inter-relationships of video dialtone and cable TV re-regulation.

repositioning the station's signal, and the broadcaster may file a complaint with the Commission if the station believes the proposed actions are unlawful or unfair. At Section 614(b)(6), the FCC is instructed to resolve any dispute concerning the channel positioning of commercial stations.

GTE urges the Commission in its procedural rules to provide for legally sufficient notice to LECs where LECs are providing video dialtone or otherwise leasing channels to the cable operators making such carriage decisions, or are renting to alternative video distributors who would be affected by the determinations.

As the FCC's goals for video dialtone are realized, conventional cable operators and their competitors increasingly can be expected to rent channel capacity from LECs. Video dialtone systems, by definition, will not necessarily be occupied entirely by single cable operators exercising complete control over most or all channel capacity -- as is the case with conventional cable systems. To the contrary, we can anticipate "mixed" service to one or more cable operators as well as entrepreneurial "customer/programmers,"⁴ each of which would select programming for only a portion of the capacity.

Under these circumstances, a deleted or repositioned broadcast station may not be limited to contesting the cable operator's actions. The station may have recourse to satisfactory carriage by a customer/programmer or the LEC itself. Given the Commission's mandate to resolve such disputes, the agency should have every interest in pragmatic alternatives to litigation between the broadcaster and the cable operator. Resolution would be facilitated by service of notices, complaints and related documents on the LEC lessor.

⁴ *First Report and Order*, CC Docket 87-266, 7 FCC Rcd 300, 327-28 (1991), reconsidered and clarified on other grounds, 7 FCC Rcd 5069 (1992).

Absent an intermediary distributor, nothing should preclude direct carriage negotiation between broadcasters and LECs.

The Notice at ¶42 proposes that “where there is a differentiation between an entity performing a service delivery function and an entity selling programming that is delivered over the facilities of another,

it appears logical that the retransmission consent obligation should fall on the entity directly selling programming and interacting with the public . . . Thus, for example, the obligation would not fall on a microwave common carrier delivering multiple channels of programming to cable system customers, but would be the obligation of the cable systems involved.

Nothing in this proposal, it seems, would preclude the LEC from negotiating consent with a broadcaster directly where no intermediary takes up the obligation. GTE asks that the Commission affirm this interpretation, and declare that a LEC is free to negotiate with a station seeking transport as it would with any customer/programmer under the video dialtone regime.

CONCLUSION

For the reasons stated above, both the rules to be implemented here and those promulgated under video dialtone will better serve the public interest if LECs leasing video capacity to cable operators and competitive providers are given the suggested procedural and other tools to assist in pragmatic resolution of carriage disputes.

Respectfully submitted,

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